

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY,
INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION

Master Dkt:
1:13-md-02419-RWZ

~~~~~  
THIS DOCUMENT RELATES  
TO:

All Actions

~~~~~

30(b)(6) VIDEOTAPED DEPOSITION OF
MARTIN KELVAS

1:07 p.m.
August 26, 2015

Suite 2600
5 Concourse Parkway
Atlanta, Georgia

Blanche J. Dugas, RPR, CCR No. B-2290

APPEARANCES OF COUNSEL

On Behalf of the Plaintiffs:

GEORGE NOLAN, Esquire
Leader, Bulso & Nolan, PLC
Suite 1740
414 Union Street
Nashville, Tennessee 37219
(615) 780-4114
(615) 780-4122 (facsimile)
gnolan@leaderbulso.com

DANIEL L. CLAYTON
Kinnard, Clayton & Beveridge
127 Woodmont Boulevard
Nashville, Tennessee 37205-2240
(615) 297-1007
(615) 297-1505 (facsimile)
dclayton@kcbattys.com

J. GERARD STRANCH, IV, Esquire
BENJAMIN A. GASTEL, Esquire
Branstetter, Stranch & Jennings, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
(615) 254-8801
(615) 250-3937 (facsimile)
gerards@branstetterlaw.com

On Behalf of St. Thomas Health, St. Thomas Network,
St. Thomas West Hospital f/k/a St. Thomas Hospital:

YVONNE K. PUIG, Esquire
ERIC J. HOFFMAN, Esquire
Norton, Rose, Fulbright
Suite 1100
98 San Jacinto Boulevard
Austin, Texas 78701
(512) 536-2450
(512) 536-4598 (facsimile)
yvonne.puig@nortonrosefulbright.com
eric.hoffman@nortonrosefulbright.com

1 On Behalf of Saint Thomas Outpatient Neurosurgical
Center, LLC; Howell Allen, a Professional Corporation;
2 John W. Culclasure, M.D.; Debra V. Schamberg, RN:
CHRISTOPHER TARDIO, Esquire
3 Gideon, Cooper & Essary, PLC
Suite 1100
4 315 Deaderick Street
Nashville, Tennessee 37238
5 (615) 254-0400
(615) 254-0459 (facsimile)
6 chris@gideoncooper.com

7 On Behalf of Specialty Surgery Center - Crossville,
PLLC; Kenneth R. Lister, M.D.; Kenneth R. Lister,
8 M.D., PC:
KENT E. KRAUSE, Esquire
9 Brewer, Krause, Brooks, Chastain & Burrow, PLLC
Suite 2600
10 611 Commerce Street
Nashville, Tennessee 37203
11 (615) 630-7755
(615) 256-8985 (facsimile)
12 kkrause@bkblaw.com

APPEARANCES VIA VIDEOSTREAM

On Behalf of Ocean State Pain Management, Inc. and
Abdul Barakat, M.D.:

THOMAS M. DOLAN, III, Esquire
Capplis, Connors & Carroll, PC
Suite 330
18 Tremont Street
Boston, Massachusetts 02108
(617) 227-0722
(617) 227-0772 (facsimile)
tdolan@capplisconnors.com

On Behalf of Dallas Back Pain Management/Momentum
Pain Management and Abbeselom Ghermay, M.D.:

HEATHER KANNY, Esquire
Fraley & Fraley, LLP
Suite 6300
901 Main Street
Dallas, Texas 75202-3773
(214) 761-6468
hkanny@fraley-law.com

On Behalf of Tim I. Chowdhury, M.D.:

BARTHOLOMEW T. FREEZE, Esquire
Freund, Freeze & Arnold
Suite 800
65 E. State Street
Columbus, Ohio 43215-4247
(614) 255-7567
(614) 827-7303 (facsimile)
bfreeze@ffalaw.com

On Behalf of Advanced Pain & Anesthesia Consultants
PC, BKC Pain Specialists, and Cincinnati Pain
Management Consultants, Inc.:

CAROLINE M. KELLY, Esquire
Morrison Mahoney, LLP
250 Summer Street
Boston, Massachusetts 02210
(617) 737-8885
(617) 342-4802 (facsimile)
ckelly@morrisonmahoney.com

1 On Behalf of a Defendant Party:
JOSEPH C. KLAUSING, Esquire
2 O'Bryan, Brown & Toner, PLLC
1500 Starks Building
3 455 South 4th Street
Louisville, Kentucky 40202
4 (502) 585-4700
klausingj@obtlaw.com
5

6 Also Present:
Henry Stewart, videographer
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 close to 70 hospitals, that was a big deal
2 to get something coordinated at that level,
3 and that's what the committee was busy
4 doing.

5 Q. (By Mr. Stranch) And would that filter
6 down, not just to hospitals, but to clinics and other
7 surgery centers and everything within the Ascension
8 umbrella or was this focused on hospitals only?

9 MS. PUIG: Object to the form.

10 Q. (By Mr. Stranch) You can answer.

11 MS. PUIG: Ask him to restate it.

12 THE WITNESS: Okay. If you can
13 restate.

14 MS. PUIG: Sorry. Because I'm
15 objecting and you're losing it. Ask him to
16 restate it.

17 THE WITNESS: Yeah, if you can
18 restate the question.

19 Q. (By Mr. Stranch) Did the pharmacy council
20 only work on behalf of hospitals owned by Ascension or
21 was it for all entities that Ascension owned, clinics,
22 whatever?

23 A. That's a good question. I -- it was mostly
24 the hospitals. I was -- I had no knowledge beyond the
25 hospital practices at all these different sites

1 because it was voluminous. There was predominantly
2 the pharmacies within the hospitals and whatever they
3 were responsible for for drug distribution.

4 Q. Okay.

5 A. Yeah.

6 Q. So -- but you are aware that Ascension owns
7 more than just hospitals; correct? They own other
8 medical service facilities, ambulatory surgery
9 centers. They own clinics and other things of that
10 nature; correct?

11 A. I was aware that they had diverse
12 businesses that they owned. I was not -- detailed
13 knowledge of them, nor knowledge of how they bought or
14 sold their drugs or how they administered them. I was
15 only aware of our ministry in the Nashville area as to
16 what we did and how we purchased and distributed
17 medications. I wasn't privy to all of -- all of the
18 ministries throughout the United States. So I really
19 can't answer that question beyond that.

20 Q. Okay. So you don't know if the pharmacy
21 council applied to nonhospital entities owned by
22 Ascension or not?

23 A. No. Our contracts were basically for the
24 nonprofit side of the business. As far as any
25 for-profit ventures, that's a whole different class of

1 trade. We had nothing to do with them.

2 Q. So anything that was on the nonprofit side,
3 either because it was owned on the nonprofit side or
4 operated by the nonprofit side, would be covered by
5 the pharmaceutical council; correct? Or the pharmacy
6 council; correct?

7 MS. PUIG: Would be or would not be?

8 MR. STRANCH: Would be covered by the
9 pharmacy council.

10 THE WITNESS: The nonprofit side
11 only.

12 Q. (By Mr. Stranch) Yes. That's correct.

13 A. Yes.

14 Q. And St. Thomas Hospital fell within the
15 nonprofit side; correct?

16 A. Yes.

17 Q. Okay. Does that also apply to network and
18 health? St. Thomas Network and St. Thomas Health also
19 fell within the nonprofit side?

20 A. The network, yes. I couldn't tell you -- I
21 didn't have a list. I only knew what I was dealing
22 with at St. Thomas Hospital. We had a limited number
23 of clinics that we were told were part of the network.
24 They were considered a cost center of the hospital.

25 Q. Okay.

1 MR. HOFFMAN: We need to clarify
2 network. You mean St. Thomas Network?

3 MR. STRANCH: That's correct.

4 THE WITNESS: I'm not -- I don't know
5 the exact definition of the network. We
6 called the network was the nonprofit side.
7 It would be those cost centers that were
8 within the hospital that we were told yes,
9 this is a cost center of the hospital. We
10 can work with them and order some
11 medications for them, but anybody on the
12 for-profit side that were not part of the
13 network, we could not go there. We could
14 not have any talks or discussions with them
15 in regards to drug purchases or sales.

16 Q. (By Mr. Stranch) Do you know what was on
17 the nonprofit side, what entities those were?

18 A. We had a list.

19 Q. I mean, are they 12 entities there, 20
20 entities there?

21 A. I don't remember. It's probably changed
22 since I've been there. It was very small. There were
23 maybe four or five. That was about it.

24 Q. Was STOPNC on that list?

25 A. No.

1 A. That's all.

2 Q. Okay. Good.

3 MR. GASTEL: I'm confused by Yvonne's
4 objections, too.

5 MS. PUIG: I'm going to object to
6 your objection.

7 THE WITNESS: I think I'm walking
8 home.

9 MR. STRANCH: We'll give you a ride.
10 Don't worry.

11 MS. PUIG: That would be quite awry.
12 I want to be the hood ornament for that car
13 ride.

14 Q. (By Mr. Stranch) Okay. So I want to try
15 to talk about this conversation with Terry Grinder.
16 My understanding of your -- and I may be putting words
17 into your mouth, and so if I do, please correct me.
18 I'm not trying to.

19 My understanding is that Mr. Grinder told
20 you that you could not purchase from -- as a hospital,
21 you could not purchase from a compounding pharmacy in
22 bulk and then hold it and resell it; is that correct?

23 A. He went a step further. He said you can't
24 buy any product from them and resell it. It had, you
25 know, this relationship of one prescription, one drug.

1 He gave me the illustration of a triangle. You have
2 the physician, the patient and the pharmacy. You're
3 now putting a second pharmacy in this triangle.
4 Doesn't belong there. That's the problem. It was a
5 great illustration.

6 So having two pharmacies, it's -- your one
7 pharmacy is compounding for the other pharmacy, and
8 it's selling to one and then the pharmacy is selling
9 again to the patient. He said that -- that, in his
10 interpretation was not legal.

11 Q. Okay.

12 A. That's the problem.

13 Q. But this -- your understanding is this
14 would have been okay if the second compounding
15 pharmacy had held a manufacturer's license; correct?

16 A. That is correct.

17 Q. Okay.

18 A. Because now it's not a pharmacy. It's a
19 manufacturer. That's a different entity, a different
20 licensure. They're licensed in the State of Tennessee
21 as a manufacturer or they're -- they're licensed
22 somewhere as a manufacturer and inspected by the FDA.

23 Q. Okay.

24 A. So you can do that. That's the model that
25 works.

1 Q. Okay.

2 A. Yeah.

3 Q. And so within this triangle that you just
4 described, who within that triangle of patient,
5 doctor, pharmacy is responsible for patient safety?

6 A. They all are, including the patient.

7 Q. Okay.

8 A. Everyone has a responsibility.

9 I mean, we could spend the rest of the
10 afternoon talking about patient safety. I'm trying to
11 answer your questions and be specific.

12 Q. I appreciate that.

13 A. Yeah.

14 Q. And that's why I'm asking.

15 So within the triangle, for the patient
16 safety, the -- what would be the pharmacy's
17 responsibility as it relates to patient safety?

18 A. Patient safety starts with receiving the
19 order from the physician. So that you do due
20 diligence to reviewing the order to make sure it's the
21 right drug for the right patient, the right dose.
22 There's no contraindications. No drug-drug
23 interactions, so on and so forth.

24 And then the preparation of the product,
25 whatever that is, if there is preparation involved.

1 Repackaging, compounding, whatever. So that's a safe
2 product and labeling that product in a hospital
3 setting so that the nurse can administer it.

4 It's different than retail. So we won't go
5 to retail discussion right now.

6 Q. But the situation in which -- okay. So
7 that would be the pharmacy's responsibility as to
8 patient safety in the traditional three triangle
9 without the pharmacy being a retail pharmacy; correct?

10 A. In a hospital setting.

11 Q. In a hospital setting?

12 A. Yeah.

13 Q. Would that also apply to in a clinical
14 setting, like an ambulatory surgery center?

15 MR. KRAUSE: Object to the form.

16 Q. (By Mr. Stranch) You can answer the
17 question.

18 A. It's a different scenario. In a clinic
19 setting, there's no pharmacy. Again, we can talk all
20 afternoon about how I feel about that, but that's my
21 philosophy and that's a whole different discussion.
22 The triangle is different, if you will. The
23 relationship, you have the patient and the doctor and
24 the clinic. There's no pharmacy necessarily in that
25 equation. The clinic, the physician is allowed to buy

1 and purchase pharmaceuticals. Now we're talking about
2 a different class of trade now. There's no pharmacy
3 in that equation. Do I agree with that? Well, that's
4 my own -- I have my own opinion. I'm not going to go
5 there right now.

6 But you have a physician and a patient
7 relationship that is protected, and the physician can
8 purchase drugs. They're allowed to do that. They're
9 licensed to do so, and they can administer it to the
10 patient. There's no pharmacy involved in that
11 equation. We're out of the loop.

12 Q. Briefly, what is your -- what is your
13 concern with that setup?

14 MR. TARDIO: Object to the form.

15 THE WITNESS: Yeah. I mean, my
16 opinion has maybe no bearing on this
17 because the law allows it and it's
18 considered legal, and the physician is
19 assuming the responsibility to whatever
20 they buy, it's a good product, reliable and
21 meets all the requirements before the drug
22 is utilized and administered to the
23 patient. The nurse may administer it so
24 the doctor usually does -- well, sometimes
25 the doctor, but it depends on the

DISCLOSURE

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer or the referral source for the deposition, with any party to the litigation, counsel to the parties, or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Discovery Litigation Services, LLC. Discovery Litigation Services, LLC was contacted to provide court reporting services for the deposition. Discovery Litigation Services, LLC will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28(c).

Discovery Litigation Services, LLC has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Discovery Litigation Services, LLC will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Blanche J. Dugas
CCR No. B-2290

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3
4 I hereby certify that the foregoing
5 transcript was reported, as stated in the
6 caption, and the questions and answers
7 thereto were reduced to typewriting under
8 my direction; that the foregoing pages
9 represent a true, complete, and correct
10 transcript of the evidence given upon said
11 hearing, and I further certify that I am
12 not of kin or counsel to the parties in the
13 case; am not in the employ of counsel for
14 any of said parties; nor am I in any way
15 interested in the result of said case.

16
17
18
19
20 BLANCHE J. DUGAS, CCR-B-2290
21
22
23
24
25

CAPTION

The Deposition of MARTIN KELVAS, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

1 CERTIFICATE

2 STATE OF GEORGIA

3 COUNTY OF FULTON

4 Before me, this day, personally appeared,
5 MARTIN KELVAS, who, being duly sworn, states that the
6 foregoing transcript of his deposition, taken in the
7 matter, on the date, and at the time and place set out
8 on the title page hereof, constitutes a true and
9 accurate transcript of said deposition.

10

11 _____

12 MARTIN KELVAS

13

14 SUBSCRIBED and SWORN to before me this
15 _____ day of _____, 20____ in the
16 jurisdiction aforesaid.

17

18 _____

19 My Commission Expires _____ Notary Public

20

21 *If no changes need to be made on the following two
22 pages, place a check here _____, and return only this
23 signed page.*

24

25

DEPOSITION ERRATA SHEET

DLS Assignment No. 23352

Case Caption: In Re. New England Compounding Company
Products Liability Litigation

Witness: MARTIN KELVAS - 08/26/2015

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read
the entire transcript of my deposition taken in the
captioned matter or the same has been read to me, and
The same is true and accurate, save and except for
changes and/or corrections, if any, as indicated by me
on the DEPOSITION ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath.

Signed on the _____ day of
_____, 20____.

MARTIN KELVAS

DEPOSITION ERRATA SHEET

DLS Assignment No. 23352

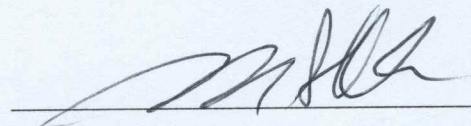
Case Caption: In Re. New England Compounding Company
Products Liability Litigation

Witness: MARTIN KELVAS - 08/26/2015

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read
the entire transcript of my deposition taken in the
captioned matter or the same has been read to me, and
The same is true and accurate, save and except for
changes and/or corrections, if any, as indicated by me
on the DEPOSITION ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath.

Signed on the 19th day of
October, 2015.



MARTIN KELVAS

DEPOSITION ERRATA SHEET

Page and line	Change to	Reason for change
GLOBAL	"St. Thomas Health" should be "Saint Thomas Health"	Transcription error
GLOBAL	"St. Thomas Network" should be "Saint Thomas Network"	Transcription error
GLOBAL	"St. Thomas Entities" should be "Saint Thomas Entities"	Transcription error
GLOBAL	"Beckom" should be "Beckham"	Transcription error
1	Remove reference to "30(b)(6)"	Transcription error
15/16	Change "them" to "him"	Transcription error or misspoke
23/7	"stopped" should be "started"	Transcription error or misspoke
25/24	Change "Carmichael" to "Carmen"	Misspoke
26/12	Change "of it" to "the severance letter"	Clarification
27/25	Change "Ebel" to "Boal"	Transcription error
32/11	Change "direct report" to "supervisor"	Misspoke
43/18	Change "upstanding" to "standing"	Transcription error
45/13	Change "law" to "log"	Transcription error
45/14	Change "Ebel's" to "Boal's"	Transcription error
52/10	Change "Tagatzs" to "Tagatz"	Transcription error
61/12	Change "PT and T" to "P and T"	Transcription error or misspoke
66/23	Insert "non-profit" before "clinics"	Clarification
67/5	Insert "What" before "we"	Transcription error or misspoke
68/3	Change to "That's what I was led to believe, if by Ascension Entities you're referring to Saint Thomas Health"	Clarification
71/21	Change "antirooms" to "anterooms"	Transcription error
82/23	Change "Ebel's" to "Boal's"	Transcription error
98/20	Change "reviewing" to "review"	Transcription error or misspoke
104/19	Insert "a" after "had"	Transcription error or misspoke
120/13	Change "an inference" to "a reference"	Transcription error or misspoke
160/16	Change "now" to "not"	Transcription error
166/9	Change "Giomi" to "Giamei"	Transcription error
167/19	Insert "non-profit" before "clinics"	Clarification
184/5	Change "you're" to "your"	Transcription error

SIGNATURE: _____



DATE: _____

10-19-15